

April 10, 2015

VIA EMAIL AND FEDEX

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
Attn: Kim Collins, Paralegal  
999 E Street, N.W.  
Washington, D.C. 20463  
kcollins@fec.gov

Re: MUR 6869, In the Matter of the Commission on Presidential Debates *et al.*

Dear Ms. Collins:

We represent Level the Playing Field and Dr. Peter Ackerman, the complainants in the above-referenced matter. We write to provide the Federal Election Commission ("FEC") with additional evidence based on events occurring after the Complaint was filed, which supports the Complaint.

The Complaint alleges that the Commission on Presidential Debates ("CPD") and its leadership, who are responsible for hosting the general election presidential debates, have violated the FEC's regulations governing debate sponsorship. The Complaint documents, *inter alia*, that the CPD "support[s] the Republican and Democratic parties and oppos[es] third parties and independents, in direct violation of the prohibition on 'support[ing] or oppos[ing] . . . political parties' in the FEC's rules." Compl. at 13 (quoting 11 C.F.R. § 110.13(a)(1)). Recent comments by respondent Frank Fahrenkopf, Jr., a co-chair of the CPD since its founding in 1987, confirm the CPD's bias and respondents' violation of federal election law.

On April 1, 2015, Fahrenkopf appeared on the United Kingdom news channel, Sky News, in his role as co-chair of the CPD to discuss the CPD's debate sponsorship activities. In that interview, Fahrenkopf admitted that the CPD's "system" for selecting candidates consists of "go[ing] with the two leading candidates, it's [sic] been the two political party candidates." Tr. of Frank Fahrenkopf's April 1, 2015 Appearance on Sky News at 2:19-20, attached as Ex. A.<sup>1</sup> Fahrenkopf's admission in an appearance in which he spoke on behalf of the CPD provides further corroboration of complainants' allegations, underscores why the FEC must urgently take action on the Complaint, and illustrates why, at a minimum, an investigation of the CPD (if one has not already begun) is necessary.

<sup>1</sup> A copy of a video clip of Fahrenkopf's appearance is on the enclosed DVD and available at <http://mms.tveyes.com/PlaybackPortal.aspx?SavedEditID=2313770f-b3ce-427a-921f-1f049dde04eb>.

First, Fahrenkopf's comments confirm that the CPD violates the FEC's debate staging rules. Those rules prohibit a debate sponsor from having a candidate selection system designed to include the Republican and Democratic nominees and exclude all others. Fahrenkopf admitted that that is exactly what the CPD does: it uses a "system" designed to include only "the two leading candidates," *i.e.*, "the two political party candidates."

Second, Fahrenkopf's comments underscore why the FEC must act swiftly to address the CPD's violations of the FEC debate staging regulations.<sup>2</sup> The CPD has not announced the rules it will apply to determine access to the 2016 debates. The CPD, however, has used the same "system" for selecting the "two political party candidates" in every election since 2000. And, according to public reporting, the CPD was going to consider the rules to use in 2016 at its April 1 annual meeting. *See Benjamin Siegel, Presidential Debates: Introducing the Group Trying to Change the Rules*, ABCNews.com (Mar. 18, 2015 3:50 a.m.), <http://abcnews.go.com/Politics/presidential-debates-introducing-group-change-rules/story?id=29709713>, attached as Ex. B. Fahrenkopf's comments came in the immediate aftermath of that meeting, *see* Ex. A at 3:12-13, and are a clear indication that the CPD has no intention of reconsidering its discriminatory "system" and intends to keep it in place for the 2016 election. The FEC must act on the Complaint to prevent the CPD's serious violations of the federal election law from infecting another presidential campaign.

Finally, the interview illustrates why the FEC must, at a minimum, investigate the CPD and not rely on any self-serving statements it offers in defense of its practices. Complainants understand that the CPD submitted a declaration from its executive director, Janet Brown, in response to the Complaint. *See* Excerpts of CPD Comment on Level the Playing Field Petition for Rulemaking, dated Dec. 15, 2015, at 1 n.1, attached as Ex. C. In that declaration, Brown claims that the CPD chose its current selection system to be "sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that invitations would be extended to candidates with only very modest levels of public support, thereby creating an unacceptable risk that leading candidates with the highest levels of public support would refuse to participate." Excerpt of Decl. of Janet Brown, dated Dec. 12, 2014, at ¶ 32, attached as Ex. D. Fahrenkopf's comments to SkyNews directly contradict Brown's made-for-litigation declaration. Fahrenkopf admits that the CPD uses its "system" to ensure that only the "two leading candidates" can participate in the debates, and does so with full knowledge that the "two leading candidates" are going to be the "two political party candidates." Moreover, Fahrenkopf admitted in the SkyNews interview that the CPD knows that there is no material risk of leading candidates refusing to debate because, as he put it, "it would be very hard for, in our general election, for a candidate to deny the right of the American people to see them, facing

<sup>2</sup> Of course, the urgency of the issue should already be apparent to the agency based on the public response to the petition for rulemaking that complainant Level the Playing filed late last year. During the one-month comment period on that petition, 1,252 individuals and organizations – all but five of which were unknown to Level the Playing Field – rejected the CPD's exclusionary system and all 1,252 requested that the FEC open up a rulemaking to ensure a debate system that is fair to independent and third-party candidates. The CPD was the *lone* commenter to defend its current "system."

them and their challenger.”<sup>3</sup> Ex. A at 2:4-5. Brown’s contention that the CPD adheres to its current rule because of the risk that leading candidates would refuse to participate is a smokescreen to obscure the CPD’s discriminatory purpose. For the FEC to accept *ipse dixit* from Brown that her boss has publicly contradicted would be a serious error.

No doubt the CPD will try to explain away Fahrenkopf’s comments. It has done this before. In MUR 5414, for example, there was substantial evidence of current and former CPD’s directors’ admissions of the CPD’s bipartisan purpose:

- Alan Simpson has said “You have a lot of thoughtful Democrats and Republicans on the commission that are interested in the American people finding out more about the two major candidates—not about independent candidates who mess things up.” First General Counsel’s Report at 14, MUR 5414 (Commission on Presidential Debates) (Dec. 7, 2004)
- John Lewis has said “There’s no question that having the two major parties in absolute control of the presidential debate process, and there’s no question that they do, strengthens the two-party system. These are the most important events of an election, and if no other candidates are getting in the debates, the American people are just not going to hear about them, which means the two parties basically have a monopoly.” *Id.*
- Newton Minnow has said “Because debates are political events, responsibility for them should rest with the political system—with the Democratic and Republican Parties . . . . Although entrusting such debates to the major parties is likely to exclude independent and minor party candidates, this approach is consistent with the two-party system. Moreover, if the Democratic and Republican nominees agreed, other candidates could be included.” Compl. at 28 n.113; *see* First General Counsel’s Report at 14 n.11, MUR 5414 (Commission on Presidential Debates) (Dec. 7, 2004).
- David Norcross has said that the CPD is “not really nonpartisan. It’s bipartisan.” First General Counsel’s Report at 14, MUR 5414 (Commission on Presidential Debates) (Dec. 7, 2004).
- Barbara Vucanovich has said that the CPD is “extremely careful to be bi-partisan.” *Id.*

Not one of these individuals denied making these statements. All, however, offered self-serving boilerplate declarations claiming that the statements did not “fully or fairly” represent their views. *Id.* at 16; *see id.* at 14 n.11.

<sup>3</sup> Indeed, Fahrenkopf has recognized this point since at least 1996, when he admitted that the debates had “reached the point where it is impossible, in practical terms, for anyone to say no. . . . Debates have become institutionalized. Even for the candidates to delay or play games these days costs them.” Compl. at 50.

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The pattern here is obvious: the CPD's leaders frequently admit the organization's partisan bias through word and deed when their guard is down, *see supra*; Compl, at 15-32, but then turn around and plead their purported nonpartisan bona fides when someone questions their actions before this agency. The FEC should see through this obvious whitewash and hold the CPD accountable for its violations of federal election laws.

Sincerely,



Alexandra A.E. Shapiro

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**Transcript of Frank Fahrenkopf Interview**  
**from *Sky News Tonight With Adam Boulton & Anna Jones***  
**Sky News, April 1, 2015<sup>1</sup>**

**Adam Boulton (AB):** Joining me now from Washington is Frank Fahrenkopf, he is the co-chairman on the Commission on Presidential Debates. And Mr. Fahrenkopf, I wonder if I can ask you the big question, first of all, in elections, how much difference do you think debates make to the outcome?

**Frank Fahrenkopf (FF):** Well we know from the time that we've been doing the debates, my commission, which we started in 1988 and have done 19 presidential general election debates since, that our polling shows us that 65 to 70 percent of the American people say that the debates are an important factor – not the only factor – but an important factor in how they eventually cast their votes.

**AB:** In your view can they swing it from one candidate to another?

**FF:** Yea, oh there's no question you can. I mean, I think the American people – I mean I can only talk from the perspective of our debate commission, the work we've done here – they're looking for body language, they're looking for how individual candidates look each other in the eye, maybe question each other, what sort of dynamics take place in the debates. And, of course one of the things that can really swing it, is a mistake that is made in the debates. That can have a devastating effect upon a candidate.

**AB:** And how important has it been in America, because you had debates in 1960, then I think you had a 16-year hiatus before the next debate, in making them happen just about every election

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<sup>1</sup> A video of Mr. Fahrenkopf's appearance on Sky News, from which this transcript was created, is available at <http://mms.tveyes.com/PlaybackPortal.aspx?SavedEditID=2313770f-b3ce-427a-921f-1f049dde04eb>.

1 campaign since the seventies, how important has it been that there is an independent debates  
2 commission to take the argy-bargy out of it?

3 FF: I think it's been key. I mean, there was no requirement – and still no requirement – that any  
4 candidate debate, but I think it would be very hard for, in our general election, for a candidate to  
5 deny the right of the American people to see them, facing them and their challenger – you know  
6 – on television and answering questions put to them. So the fact that the commission has been in  
7 place since 1987 and started in 88, we have a long history of doing it, and I think the American  
8 public have gained trust in our commission that we do it fairly, we don't take sides, and I think it  
9 would be very, very difficult today without the commission to really get the candidates to agree  
10 to debate.

11 AB: And, this time around, of course, together, the television companies wanting to do the two  
12 lead candidates, the three lead candidates, and then a four candidate debate, the conservative  
13 leader said he wouldn't do that, and we've ended up with a seven person, a seven party, debate.  
14 What do you think the prospects for that are?

15 FF: Well, you know the primary debates here in the United States, we often – and of course the  
16 Republicans three years ago, had seven or eight people on the stage, and people jokingly say it's  
17 less of a debate than a cattle show, because there's such little time for each candidate to get  
18 across in the short period what their views are on issues. That's why in the general election  
19 debate, we have a system, and we, you know, as you know, primarily go with the two leading  
20 candidates, it's been the two political party candidates, save in except for 1992 when Ross Perot  
21 participated in the debates. So, seven people on the stage at one time is very difficult, it's going  
22 to take a very clever moderator to make sure that each candidate gets an opportunity to put forth  
23 their views.

1 AB: And what would your advice be to any of the candidates in that sort of "cattle show" lineup,  
2 as you put it?

3 FF: Well, you know, you're only going to get a little bit of time. You better make sure that you  
4 get out your view on a particular issue. The people of Great Britain are going to be watching, and  
5 ah, if you don't answer the question, or you try to get around the question, it can come back to  
6 haunt you. So, lay it out, tell the truth, tell where you are.

7 AB: I know you're a very Democratic – a very diplomatic person I meant to say, not a  
8 Democratic...

9 FF: Yea, I'm a Republican, so...

10 AB: Yea, exactly, I know that. Do you think we ought to try and enshrine this a bit more in our  
11 elections, and have a sort of model of the independent debates commission here?

12 FF: You know, it's interesting you ask that question. I just left the annual meeting of our  
13 commission, and when we finished, we went and met with representatives from 23 countries  
14 around the world, who have created their own debate commissions, where their representatives  
15 are in Washington for three days, meeting with our commission and our staff on giving them  
16 ideas of how to do it. I think it's, if you don't have something like an independent commission,  
17 you get into some real difficulties. We have problems with our news people here in the United  
18 States, and because of some of the rules of the Federal Communications Commission, it's very,  
19 very hard for any of our networks to really go forward and be the entity that puts on the general  
20 election debate. And therefore, that's why I think we have the support and have had the support  
21 for many years of all the networks to have the commission be the entity that puts on the debates.  
22 We put out the feed from the show. It's done by our pool of our major networks, and each of the  
23 networks then picks it up.

1 **AB:** And how expensive is it, having a commission? Who pays for it?

2 **FF:** The commission is done privately, we get no money from the government, we get no money

3 from the political parties, we get no money from the candidates – we raise the money through

4 private foundations, corporations, and then of course the host city, the host university because we

5 do it on university campuses. Our view is that this an educational function that we're doing, and

6 the university, its supporters, and the communities where we go, put up the services in kind, as

7 well as the amount of money necessary, because we have to take care of somewhere between

8 three and five thousand reporters who come in from all over the world to cover the debate, so

9 there are some expenses. But the commission runs on a shoestring.

10 **AB:** Mr. Fahrenkopf, thank you very much indeed. It sounds like as if there may be a better way.

11 **FF:** It's my pleasure and good luck.





# Presidential Debates: Introducing the Group Trying to Change the Rules

By BENJAMIN SIEGEL

Much like America's political system, presidential debates are dominated by the major parties and their candidates.

But a new change the rule lobbying campaign is underway to make it easier for third party candidates to join the debates in 2016 by changing how they can qualify.

## Republicans Slash Presidential Debate Schedule For 2016

## 10 Things America Wants in Its President in 2016

## Former Sen. Jim Webb Eyes 2016

Since 1988, the Commission on Presidential Debates -- founded by the Republican and Democratic parties -- has organized presidential and vice presidential debates. According to the commission's current rules, candidates must poll higher than 15 percent in numerous polls prior to the debates in order to appear.

Instead, the campaign proposes a ballot contest: A third party candidate would have to get access to ballots in enough states to reach 270 electoral votes, giving them a mathematical shot at the presidency.

If more than one candidate meets this threshold, whoever gathered the most signatures as part of the access process would participate in the fall debates -- a crucial and highly visible platform.

While presidential candidates 417 were registered with the Federal Election Commission in 2012, aren't obligated to participate in debates in order to run, the televised contests are crucial to candidate visibility.

Without that kind of exposure, you're not considered a credible candidate, said Christine Todd-Whitman, the former Republican governor of New Jersey, who supports the initiative.

In 2012, Whitman was a supporter of Americans Elect, a failed multimillion-dollar initiative to cultivate a national support for a third-party candidate funded by New York investor Peter Ackerman, who is also funding the Change the Rule campaign.

We weren't able to field a candidate, and the inability to get on television is such a hurdle [to third party candidates], she said.

Only one third party candidate -- Ross Perot in 1992 -- has participated in debates with the two major

party candidates since the CPD's founding (which was also the last time a Bush faced a Clinton in a debate).

But the American political landscape has changed over the last 23 years. A 2014 Gallup survey found that 42 percent of Americans identify with neither party, but as political independents a record high.

It's not my line, but the fastest-growing party in America is no party, said former Connecticut Sen. Joe Lieberman, a supporter of the initiative who last ran for Senate in 2006 as an independent after losing the Democratic primary.

I grew up in the two party system and believe it did a good job of coalescing minority groups of opinion, he said. But it's ceased to do that. The parties have become increasingly homogenous.

Lieberman added that along with speaking to independents, a third party candidate on the debate stage could also help shape the agenda, similar to how Perot made balancing the budget a focal point of the 1992 race.

A spokesperson for the CPD, which reviews its debate policy between election cycles, said that the ballot signatures idea has been considered in the past, and that a prior review concluded it was not the same measure of strength of a campaign as public support.

But one CPD board member, Dorothy Ridings, expects to discuss the initiative at the CPD's April 1 hearing.

The issue at hand, Ridings said, is wanting to make sure debates take place you don't want to have 27 people on stage and making sure the American public gets to hear from the likely candidates.

There is no right and wrong policy, she added.

*An earlier version of this story said that Ross Perot was the only third party candidate to poll higher than 15% before participating in a presidential debate. Instead, he was the only third party candidate to participate in a major debate since the CPD's founding.*

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December 15, 2014

**VIA HAND DELIVERY**

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Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**Re: Notice of Availability of Petition for Rulemaking No. 2014-13 (11 CFR Part 110 – Candidate Debates**

Dear Mr. Knop:

We represent the Commission on Presidential Debates (the "CPD"). We write to express the CPD's opposition to the Petition for Rulemaking filed by Level the Playing Field ("LTPF") requesting amendment of 11 C.F.R. § 110.13(c).

CPD is a private, non-profit and non-partisan 501(c)(3) organization that receives no government or party funding. CPD's primary mission is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. To that end, CPD has sponsored general election presidential debates in every election since 1988. Through its work planning and staging presidential debates over the last 26 years, CPD has gained valuable insight into the myriad issues implicated in developing candidate selection criteria.<sup>1</sup>

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<sup>1</sup> Attached to this letter are copies of the Declarations of Janet H. Brown, CPD's Executive Director (Ex. 1), and Dr. Frank Newport, Editor-in-Chief of Gallup (Ex. 2). Both declarations were originally prepared in response to the Complaint filed by Level the Playing Field under MUR 6869. Ms. Brown's declaration provides a good deal of additional information concerning the background of the CPD, the composition of its Board, and its approach to matters involving candidate selection. Dr. Newport has served as a consultant to the CPD for many years, and his declaration provides additional information concerning the CPD's use of polling data and addresses various assertions raised in the Complaint (and repeated in the Petition) concerning public opinion polls.

**BEFORE THE FEDERAL ELECTION COMMISSION**

<b>In the matter of</b>	<b>MUR 6869</b>
<b>The Commission on Presidential Debates, et al.</b>	<b>Declaration of Janet H. Brown in Support of the Commission on Presidential Debates' Opposition to Level the Playing Field and Peter Ackerman's Complaint.</b>

I, Janet H. Brown, Executive Director of the Commission on Presidential Debates ("CPD"), give this declaration based on personal knowledge.

**Background**

1. I have been the Executive Director of the CPD since March 1987. Under the supervision of the Board of Directors, I am primarily responsible for planning and organizing the debates the CPD intends to sponsor in 2016, as I have been in each presidential election year since 1988.

2. Prior to serving as Executive Director of the CPD, I served on the staffs of the late Ambassador Elliot Richardson and former U.S. Senator John Danforth. Additionally, I have held appointments at the White House Domestic Council and the Office of Management and Budget. I am a graduate of Williams College and have a master's degree in public administration from Harvard University.

3. The CPD is a private, nonpartisan, not-for-profit corporation dedicated solely to the sponsorship of general election presidential and vice presidential debates and related voter education functions. The CPD was organized in February 1987, under the laws of the District of Columbia, and has its sole office in the District of Columbia. CPD's Articles of Incorporation identify its purpose as "to organize, manage, produce, publicize and support debates for the candidates for President of United States . . ." The CPD has been granted tax-exempt status by the Internal Revenue Service under §501(c)(3) of the Internal

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